April 3, 2002

Before the
Federal Communications FCC
Washington D. C.

In the Matter of:

Schools and Libraries Universal Service
CC Docket No. 02-06
Support Mechanism

Comments on Notice of Proposed Rule Making

Eligible Services
1) Should the SLD post an online list of specific pre-approved product or services that applicants could choose from on their 471? **YES**

- If so, how often would the list need to be updated? **MORE THAN ONCE A YEAR TO KEEP UP WITH THE FAST-CHANGING TECHNOLOGY MARKET, SO THAT THE APPLICANTS CAN HAVE NEW TECHNOLOGY FUNDED.**

- How would the FCC ensure that maintaining such a list would not inadvertently limit applicants' ability to take advantage of products and services newly introduced to the marketplace? **DO NOT LIMIT ELIGIBILITY TO THE LIST, HOWEVER, KEEP THE LIST UPDATED BY WATCHING ADVANCEMENTS IN TECHNOLOGY AND KEEPING IN CONTACT WITH VENDORS ON ADVANCEMENTS/CHANGES IN PRODUCTS AND SERVICES THAT THEY OFFER.**

- How could applicants and vendors best provide input to the SLD on an ongoing basis regarding what specific products and services should be eligible? **HAVE A FORM FOR VENDORS TO SUBIMT NEW TECHNOLOGY FOR ELIGIBILITY. APPLICANTS AND VENDORS MAY BE SURVEYED FOR "WISHES" OF ELIGIBLE PRODUCTS/SERVICES.**

- How would the SLD handle services and equipment that are eligible only if used in certain ways? **APPLICANT MUST SHOW SOME TYPE OF CONTRACT OR OTHER DOCUMENTATION OF USAGE (471 ATTACHMENT?)**

Some have suggested to the FCC that the E-rate eligible services would be easier to understand if there was a centralized database of all approved products and services (as opposed to just an eligible services list). Because applicants would only select from pre-approved products and services, this presumably would decrease the number of instances in which

applicants seek funding for ineligible services. It also has been suggested that such a process would considerably simplify the application review process.

2) Is the current WAN policy (where purchased WANs are NOT eligible, but leased WANs are eligible) fair and effective? **THE FCC SHOULD EVALUATE TO DETERMINE IF THEIR POLICIES HAVE RESULTED IN INEFFICIENT USE OF FUNDS.**

History
In the Fourth Order on Reconsideration, the FCC concluded that the building and purchasing of WANs to provide telecommunications is not eligible for discounts. The FCC first concluded that the building and purchasing of WANs themselves does not constitute telecommunications services or internal connections. The FCC further found that WANs built and purchased by schools and libraries do not appear to fall within the narrow provision that allows support for access to the Internet because WANs provide broad-based telecommunications. The FCC noted, however, that schools and libraries may receive universal service discounts on WANs provided over leased telephone lines, because such an arrangement constitutes a telecommunications service.

Then, in the Tennessee Order, the FCC established that E-rate funds may be used to fund equipment and infrastructure build-out associated with the provision of eligible services to eligible schools and libraries. The FCC subsequently affirmed this principle in the Brooklyn Order, but expressed its concern that "by authorizing unrestricted up-front payments for multiple years of telecommunications service when there is significant infrastructure build-out, [the FCC] could create a critical drain on the fund, and reach the annual spending caps quickly." In attempting to strike a fair and reasonable balance between the desire not to unnecessarily drain available funds by committing large amounts annually to a limited number of applicants, and the desire to ensure that eligible schools and libraries receive supported services, the FCC determined that recipients may receive discounts on the non-recurring charges associated with capital investment in an amount equal to the investment prorated equally over a term of at least three years.

Many have suggested that the FCC consider whether their policies regarding WANs have resulted in an inefficient and unfair use of program funds and has caused a drain on program resources. Leased WAN service is, under current rules, a Priority One service. The costs of leasing WANs therefore decreases funds available for other Priority One services.

3) Should applicants be required to spread out more than 3 years the

capital expenses that telecommunications providers charge in order to build out infrastructure to a district? **YES, TO LESSEN BURDEN ON FUNDS.**

Such build out is eligible for E-rate as a result of the Brooklyn Decision (described in # 2). The FCC would like comment on how to relieve the burden this decision has placed on their fund. One possible approach they suggest would be to increase the three-year period of time over which WAN-related capital expenses must be recovered through telecommunications service charges, so that the annual burden on available program funds is reduced. Are there others?

4) Should bundled Internet Access continued to be eligible? **YES, UNTIL (IF) FUNDING RESOURCES BECOME DANGEROUSLY LOW. INTERNET ACCESS IS ONE OF THE MAIN SERVICES THAT THE E-RATE PROGRAM WAS CREATED TO ASSIST SCHOOLS AND LIBRARIES WITH.**

Such bundled Internet Access is eligible as a result of the Tennessee Decision (described in # 2). Many have suggested that the marked increase in demand for Priority One services arises from applicants leasing equipment for which they are likely to receive discounts rather than purchasing the equipment as internal connections, which have a high likelihood of not being funded under the current priority rules. The FCC seeks comment on whether a change to the Tennessee Decision is needed because of this increase in demand, and if so, what those changes would be

5) Should the FCC reconsider their narrow position on wireless technologies? **YES, THE FCC SHOULD MODIFY THEIR RULES SO THEY THEY DO NOT FAVOR WIRELINE OR WIRELESS TECHNOLOGIES, HOWEVER, SOME MONITORING SHOULD BE IMPLEMENTED TO DETER ABUSE OF SUCH TECHNOLOGIES, FOR WIRELESS CAN VERY EASILY BE ABUSED AND MISUSED FOR NONEDUCATIONAL PURPOSES.**

As wireless service has become more commonplace, many have recommended that the FCC reconsider their policies regarding the eligibility of wireless services. Wireless telephone service, for example, is not currently eligible when used by school bus drivers or other non-teaching staff of a school, including security personnel, because they have interpreted the statutory requirement that universal service discounts be provided only for "educational purposes" to exclude use by such support staff. In addition, wireless LANs are eligible, but wireless WANs are not if the equipment is purchased.

The FCC seeks comment on whether broadening eligibility for wireless services would improve the application review process and whether it would increase opportunities for fraud and abuse. In addition, in light of changing wireless technologies, the FCC seeks comment on whether they should modify their rules so that distribution of funds is consistent with their principle of competitive neutrality and does not favor wireline technology over wireless technology.

6) Should voice mail become an eligible service? **IF BUNDLED WITH REGULAR TELEPHONE SERVICE, IT SHOULD BE ELIGIBLE. VOICEMAIL HAS THE SAME SIGNIFICANCE AS ELIGIBLE E-MAIL ACCOUTS TO A SCHOOL OR LIBRARY, AND CAN DEFINITELY HELP THE APPLICANT SERVE STUDENTS/PATRONS BETTER.**

Many parties have recommended that the FCC reconsider its initial determination regarding the eligibility of voice mail because of the increasing need for, and prevalence of, voice mail as a way of communicating with school and library staff for educational purposes. Such eligibility also may streamline the application review process, by reducing administrative effort and costs associated with determining what portion of a school or library's telecommunications costs are related to voice mail, and ensuring that the school or library does not receive discounts for those costs. Accordingly, the FCC seeks comment on whether a change in voice mail eligibility would improve the operation of the program and promote the fair and equitable distribution of the program's benefits.

7) Should content be allowed to be bundled with Internet Access? **YES, IN MANY CASES, IT WOULD BE COST-EFFECTIVE FOR THE APPLICANT TO BUNDLE SERVICES. ALSO, WITH THE NEED TO SOON BUNDLE SERVICE TO COMPLY WITH CIPA, THERE WOULD BE THE NEED TO BREAK DOWN ELIGIBLE AND INELIGIBLE SERVICES ON APPLICATIONS, THUS INCREASING WORKLOAD ON BOTH ENDS OF THE PROCESS. SINCE FILTERS ARE REQUIRED TO RECEIVE FUNDING, THEY SHOULD BE ELIGIBLE.**

History
In the original Universal Service Order that created the program, the FCC concluded that schools and libraries may receive discounts on access to the Internet, but not on separate charges for particular proprietary content or other information services. The FCC held that if it is more cost-effective for a school or library to purchase Internet access provided by a

telecommunications carrier that bundles a minimal amount of content with such Internet access, a school or library may obtain discounts on that bundled package. If the telecommunications carrier provides bundled Internet access with proprietary content to a school or library, and also offers content separate from Internet access, the school or library may only obtain discounts on the price of the Internet access, as determined by the price of the bundled access and content less the price of the separately-priced content. Thus, if the only Internet access a provider offers is bundled with content for a total of $50.00 per month, and that provider sells the content separately for $30.00 per month, a school or library purchasing the bundled package would currently be eligible for discounts on $20.00 per month.

Several applicants have suggested that Internet access that includes content from one provider may provide more cost-effective access to the Internet than another provider's Internet access containing minimal or no content. For example, an applicant may receive bids for Internet access from two providers, each offering service at $50.00 a month. One provider offers access and content bundled together, and separately offers content alone for $30.00, while the second provider just offers Internet access. An applicant might find that the bundled access and content may provide more cost-effective Internet access when considering cost, reliability, and other factors than Internet access without content from the other provider. Under current rules, a recipient would be eligible for discounts on only $20.00 per month for the package of access and content, but could obtain discounts on the full $50.00 for Internet access without content from the second provider. In such a case, their rules may create undesirable incentives for an applicant to choose a provider with a similar price but poorer service and reliability.

Therefore, the FCC is seeking comments on whether they should modify their rules to state that if the only Internet access a provider offers is bundled with content but the provider also offers the content separately without Internet access, an applicant may receive full discounts on that Internet access package (including content) if that package provides the most cost-effective Internet access. Such a modification to their rules also may increase administrative efficiencies, for both applicants and the SLD, by eliminating effort and costs associated with ensuring that applicants receive no discounts for bundled content.

Also, do you feel that providers would take advantage of this approach by adding content to Internet access in order to maximize revenues? Or, do you believe that E-rate discounts should continue to be available for a provider only for the cost of access without content, if a service provider offers Internet access to consumers both with and without content?

8) Should to SLD continue with their 30% processing benchmark when reviewing funding requests that include both eligible and ineligible services? **SINCE ADMINISTRATIVE COSTS FOR THE SLD ARE TAKEN FROM FUNDING DOLLARS, THEY HAVE THE RIGHT AND RESPONSIBILITY TO DO EVERYTHING THEY CAN TO LOWER THOSE COSTS, IN ORDER TO PROVIDE ASSISTANCE TO AS MANY APPLICANTS AS POSSIBLE. I SEE THIS POLICY AS AN EFFECTIVE ONE TO FILTER OUT APPLICATIONS THAT WILL REQUIRE EXTRA ATTENTION FOR A MINIMAL FUNDING REQUEST. I ALSO SEE NO PROBLEM IN THE SLD ADJUSTING THIS PERCENTAGE TO KEEP THE PROGRAM AS BENEFICIAL AS POSSIBLE TO APPLICANTS.**

Currently, the SLD utilizes a 30% processing benchmark when reviewing funding requests that include both eligible and ineligible services. If less than 30% of the request seeks funding of ineligible services, the SLD normally will consider the request and issue a funding commitment for the eligible services, denying funding only of the ineligible part. If 30% or more of the request is for funding of ineligible services, the SLD will deny the funding request in its entirety. The 30% policy allows the SLD to process requests for funding that contain only a small amount of ineligible services without expending significant fund resources working with applicants to determine what part of the discounts requested is associated with eligible services. It also provides an incentive to applicants to eliminate ineligible services from their requests before submitting their applications, further reducing the SLD's administrative costs. For example, without the procedure, an applicant who has contracted for the construction of a new school for a lump sum might submit a request for the entire amount knowing that the SLD must then perform the necessary work to identify the costs of any eligible components, such as the telecommunications wiring. Because the SLD's annual administrative costs are drawn from the same $2.25 billion that supports the award of discounts, an increase in the administrative costs of eligibility review would directly reduce the amount of funds available for actual discounts.

The FCC seeks comments on whether there are alternative ways of separating out ineligible services on FRNs that would improve program operation, while still providing appropriate incentives to applicants to seek discounts only for eligible services.

9) Should schools and libraries be required to certify on their E-rate applications that they are in compliance with the requirements of the Americans With Disabilities Act (ADA)? **NO, THE CURRENT NOTICE IS ADEQUATE. DOES THE ADA REALLY HAVE A DIRECT EFFECT ON EVERY FUNDING REQUEST OF EVERY APPLICANT? CONSIDERING**

TELEPHONE SERVOCE DOES NOT LIMIT THOSE WHO ARE DISABLED (IT CAN ACTUALLY ASSIST THEM), APPLICANTS SOULD NOT BE REQUIRED TO SPEND MONEY TO MEET ADA.

Background
The Americans With Disabilities Act (ADA) provides comprehensive civil rights protections to individuals with disabilities in the areas of employment, public accommodations, State and local government services, and telecommunications. Related statutes, which are referenced by the ADA, include the Rehabilitation Act of 1973, and the Individuals with Disabilities Education Act. The current FCC Form 471, on which entities apply for universal service discounts, contains the following notice: "The Americans with Disabilities Act (ADA), the Individuals with Disabilities Education Act, and the Rehabilitation Act may impose obligations on entities to make the services purchased with these discounts accessible to and usable by people with disabilities." The FCC does not, however, explicitly require compliance with these statutory requirements as a condition of receipt of universal service discounts.

Some parties have suggested that the SLD require applicants to certify that the services for which they seek discounts will be used in compliance with these acts. The FCC seeks comment on whether they should adopt such a certification requirement. If you agree that such a certification should be included, they would like you to propose language of any ADA certification, and which forms the ADA certification should be on in the application process.

Post Discount Process
10) Should applicants have the final decision whether to choose discounts or reimbursement? **YES, DEFINITELY! HOWEVER, WITH CURRENT POLICIES, THE DECISION IS MADE BY THE WILLINGNESS OF THE VENDOR(S) TO COOPERATE. IT WOULD BE HELPFUL TO APPLICANTS IF THE FCC'S RULES SPECIFIED THAT SERVICE PROVIDERS MUST OFFER THE OPTION TO CHOOSE TO THE APPLICANTS.**

Background
Under existing law and FCC procedure, the SLD does not provide funds directly to schools and libraries, but rather, provides funds to eligible service providers, who then offer discounted services to eligible schools and libraries. Under existing SLD procedures, service providers and applicants are advised to work together to determine whether the applicant will either (1) pay the service provider the full cost of services, and subsequently receive reimbursement from the provider for the discounted portion, after the provider receives reimbursement through the Billed Entity Applicant Reimbursement (BEAR) process, or (2) pay only the non-discounted

portion of the cost of services, with the service provider seeking reimbursement from the SLD for the discounted portion. Because it is not clear in their rules whether the provider or the applicant may make the final determination of which of the two payment processes to pursue, the potential exists for service providers to insist that applicants to whom they provide services use the first method of paying the up-front costs, and later seeking reimbursement. Indeed, some large providers require recipients to use the BEAR form.

The FCC seeks comments on whether their rules should specify that service providers must offer applicants the option of either making up-front payments for the full cost of services and being reimbursed via the BEAR form process, or paying only the non-discounted portion up-front.

11) Should the FCC require that service providers remit BEAR reimbursements to applicants within 20 days? **WE MUST ENSURE THAT SERVICE PROVIDERS ARE NOT OVERBURDENED BY THE PROGRAM, OR THEY MAY LOSE WILLINGNESS AND ABILITY TO PARTICIPATE. IN ORDER FOR VENDORS WITH A SIGNIFICANT NUMBER OF E-RATE PARTICIPANTS, AND FOR SMALL VENDORS WHO MAY BE ADVERSELY IMPACTED BY PAYOUTS OF DISCOUNTS BEFORE RECEIVING REIMBURSEMENT FROM THE SLD, I FEEL THAT A COMPROMISE SHOULD BE FOUND. A PERIOD OF 2 BILLING CYCLES TO DISCOUNT THE APPLICANT WOULD NOT BE TOO UNFAIR OR BURDENSOME TO EITHER SIDE.**

Background
Under current SLD procedure, service providers reimbursing billed entities via the BEAR process must remit to the billed entity the discount amount within 10 days of receiving the reimbursement payment from the SLD and prior to tendering or making use of the payment from the SLD. The SLD has implemented this procedure pursuant to ongoing FCC oversight of the program, but this procedure has not been formally codified in FCC rules.

The FCC has received numerous reports from both the SLD and from affected schools and libraries that, in most cases, service providers have failed to remit these payments to applicants until well past the 10-day limit.

In order to address this problem, the FCC seeks comment on whether service providers should be required to remit these payments to the applicants within 20 days of having received them, and that failure to do so will constitute a rule violation potentially subjecting the service provider to fines and forfeitures under section 503 and/or other law enforcement action.

Further, the FCC seeks comment on whether this proposed 20-day period imposes a significant economic burden on small providers, and if so, how to

minimize such impact.

12) Should the FCC set a time limit on the number of years that E-rate discounted equipment cannot be transferred or sold? **NO, AS LONG AS UPGRADES ARE OUTLINED IN THE TECHNOLOGY PLAN, IT SHOULD BE ALLOWED. TECHNOLOGY ADVANCES TOO FAST TO LIMIT UPGRADES.**

Background
Current FCC rules provide that eligible services purchased at a discount "shall not be sold, resold, or transferred in consideration for money or any other thing of value." Nothing in their rules, however, prevents transferring equipment obtained with E-rate discounts from the eligible recipient to another entity without consideration for money or anything of value. The FCC has received reports from several entities and the SLD that some recipients are replacing, on a yearly or almost-yearly basis, equipment obtained with E-rate discounts, and transferring that equipment to other schools or libraries in the same district that may not have been eligible for such equipment.

Although the FCC recognizes that schools and libraries legitimately may desire to upgrade their equipment frequently as a result of the rapid pace of technological change, they seek comment on whether it is appropriate to balance this desire against the impact of such action on other parties seeking discounts under the program.

The FCC seeks comments on whether the program's goals would be improved by requiring that schools and libraries make significant use of the discounted equipment that they receive, before seeking to substitute new discounted equipment. Specifically, the FCC seeks comment on whether, as a condition of receipt of E-rate discounts, they should adopt measures to ensure that discounted internal connections are used at the location and for the use specified in the application process for a certain period of time.

One option could be to adopt a rule limiting transfers for three years from the date of delivery and installation of equipment for internal connections other than cabling, and ten years in the case of cabling. Under this option, an applicant could replace only 10% of its old cabling per year with new discounted internal connections (such as upgrading from copper wire to fiber optics). Otherwise, an applicant seeking discounts on new equipment to replace E-rate-funded equipment that has been in place for less than the specified time periods could do so only if it traded the existing equipment to its service provider for a credit toward the purchase of the cost of the new discounted equipment.

13) Should entities be restricted from applying for internal connections for a certain number of years? **SINCE INTERNAL CONENCTIONS FUNDING IS NOT A DEFINATE ANNUALLY, AND SINCE ONLY THE HIGHEST DISCOUNTED ENTITIES ARE ABLE TO RECEIVE FUNDING, THIS WOULD BE A VERY BENEFICIAL POLICY TO HELP MORE APPLICANTS AND ALSO IT WILL FORCE APPLICANTS WHO ARE IN THE HIGH-DISCOUNTED ECHELON TO USE FUNDS MORE WISELY, SINCE THEY DEFINITELY WILL NOT BE FUNDED EVERY YEAR.**

Several parties have suggested that in order to provide more funding to lower-discount entities and to provide a barrier to entities replacing equipment annually, the SLD should deny internal connections discounts to any entity that has already received discounts on internal connections within a specified period of years regardless of the intended use of the new internal connections.

The FCC seeks comment on whether they should adopt such a rule, on the appropriate time frame for such a rule, and whether they should impose this limitation only in situations where the applicants have previously received discounts above a specified threshold in the relevant time period. Further, the FCC is open to other ideas or suggestions to address this issue.

14) Should schools be permitted to distribute excess bandwidth during non-school hours to non-education entities? **TO ELIMINATE ABUSE OF THE PROGRAM, ALL FUNDS FROM SLD SHOULD BE USED ONLY FOR EDUCATIONAL PURPOSES.**

Background
The Act requires that discounts on services be provided for educational purposes to schools and libraries. In the original Universal Service Order, the FCC implemented this provision by requiring schools and libraries to certify that the services obtained through discounts from the schools and libraries mechanism will be used solely for educational purposes. The FCC determined that the certification rules, including the educational purposes rule, were reasonable and not unnecessarily burdensome, especially in light of the FCC's goals to reduce fraud, waste, and abuse.

In some instances, the discounted services received by schools and libraries through the schools and libraries program are provided on a non-usage sensitive basis and are used for educational purposes during hours when the schools and libraries are open, but remain unused during off-hours when the entities are closed. As a result, due to the non-usage sensitive nature of the services, services that could be used after the operating hours of schools and libraries presently go unused.

The FCC seeks comment on the types of situations that might warrant utilization of excess service obtained through E-rate discounts when services are not in use by the schools and libraries for educational purposes.

If the FCC were to modify their rules expressly to address the use of excess services in limited circumstances, they seek comment on whether to consider conditioning such use on several criteria:
1) that the school or library request only as much discounts for services as are reasonably necessary for educational purposes;
2) the additional use would not impose any additional costs on the schools and libraries program;
3) services to be used by the community would be sold on the basis of a price that is not usage sensitive; 4) the use should be limited to times when the school or library is not using the services; and
5) the excess services are made available to all capable service providers in a neutral manner that does not require or take into account any commitments or promises from the service providers.

Further, the FCC seeks comment regarding how such an arrangement would function. In particular, they seek comment on how to ensure that any revised rule would not indirectly impose costs on the E-rate program or that applicants would not request more service than is necessary for educational purposes.

Appeals
15) Should the FCC's recent decisions to a) temporarily extend the deadline for all appeals from 30 to 60 days, and b) change the appeal filed date from the receipt date to the postmark date, be made permanent? Also, is 60 days sufficient or should the appeal window be longer? **DEFINITELY, THE APPEAL WINDOW SHOULD BE EXTENDED. 30 DAYS PROVIDES INSUFFICIENT TIME TO REVIEW DECISIONS AND PREPARE A SOLID APPEAL, ESPECIALLY CONSIDERING THE STATUS OF THE POSTAL SERVICE AND DELAYED MAIL DELIVERY CREATED BY SECURITY CONCERNS. THE SLD IS DEFINITELY NOT INFALLIBLE.**

Background
As of January 1, 2002, the FCC has reviewed 740 appeals from the SLD's decisions. Of these, 592 were denied or dismissed, 135 were granted, and 13 were granted in part.

To date, the FCC has dismissed appeals as untimely approximately 22% of the time. Parties have suggested that some extension of time for filing appeals will provide aggrieved schools and libraries a greater opportunity to review the relevant decisions, and determine whether there are valid bases for

appeal in light of the governing rules and FCC precedent. The FCC, therefore, invites comment on whether this modification to their rules would be beneficial.

16) What should the SLD do if there is not sufficient funding available to fund all successful appeals? **AN OVERTURNED DECISION BY AN APPEAL INDICATES AN ERROR IN JUDGEMENT OR PROCESSING OF AN APPLICATION, THEREFORE THE APPLICANT SHOULD NOT BE PENALIZED. THEY ARE ENTITLED TO THE FUNDING AMOUNT THAT THEY ORIGINALLY APPLIED FOR. IF IN THE CASE OF INSUFFICIENT FUNDS TO GRANT APPEALS, THE CURRENT POLICY OF PAYING BY PRIORITY AND DISCOUNT PERCENTAGE IS FAIR. WHEN AND IF FUNDS ARE DIMINISHED BEFORE ALL ARE GRANTED FUNDING FOR APPEALS, THAT APPLICANT SHOULD BE GIVEN TOP PRIORITY FOR REIMBURSEMENT OF FUNDS IN THE NEXT FUNDING YEAR. ALSO, RETURNED/UNUSED FUNDS SHOULD BE DIRECTED TOWARDS APPELLANTS IN THIS POSITION.**

Background
Each funding year, the SLD sets aside a portion of the funds available that year for the E-rate program to ensure that sufficient funds will be available for any appeals that may be granted by the SLD or the FCC. The SLD calculates this amount in part by generating a prediction of the percentage of its decisions that will be reversed based on historical experience. Because the prediction may underestimate the actual number of reversed decisions, it is possible that the appeal reserve fund in a particular year will ultimately be inadequate to fund all successful appeals in that year.

In the Eleventh Reconsideration Order and Further Notice, the FCC proposed certain rules establishing funding priorities for the SLD to apply when distributing funds from the appeal reserve to schools and libraries that successfully appeal decisions of the SLD. Specifically, the FCC proposed that the SLD first should fund all Priority One appeals, and then allocate any remaining funds in the appeal reserve to Priority Two appeals in order of descending discount rate. The FCC further proposed that if funds were not available for all Priority One appeals, then all funding should be allocated to Priority One appeals on a pro-rata basis. To ensure correct distribution of funds to Priority One appeals, the FCC proposed that the SLD should wait until a final decision has been issued on all Priority One service appeals before allocating funds to such services on a pro-rata basis.

In response to these proposals, several have suggested that it is inappropriate to limit appellants to those funds in the appeal reserve fund because it might result in successful appellants being treated differently

from applicants who were awarded funding initially. In some circumstances, two schools or libraries of similar eligibility that file simultaneous applications for identical support might receive different funding merely because one was subject to an erroneous initial funding decision that was subsequently reversed on appeal.

To avoid such a result, the FCC now seeks comment on whether, to ensure a fair and equitable distribution of funds, they should instead fully fund successful appeals to the same extent that they would have been funded in the initial application process had they not been initially denied funding.

The FCC further seeks comment on what rules should govern if the new proposal were adopted, in the event that the funding year's appeal reserve is depleted. One option, for example, would be for the SLD to rely on any other funds that remain from the current funding year first, including funds that had never been committed and funds that had been committed but were never used by the original recipients. If these sources are unavailable or insufficient, the SLD could then use funds from the next funding year as soon as they become available, and reduce the level of discounts available in that next funding year by that amount.

The FCC also seeks comment on whether the SLD should fund successful appellants in the order that decisions on appeal are issued, except that the SLD should not commit funds to successful applicants requesting support for Priority Two services until the SLD is certain that sufficient funds remain to fund all successful appellants requesting discounts for Priority One services.

Enforcement

17) Should the SLD be permitted to audit applicants and service providers, at applicant and service provider expense where they have reason to believe that there is serious waste, fraud or abuse? **YES. IF THERE IS REASON FOR THE SLD TO SUSPECT FRAUDULENT USAGE OF E-RATE FUNDS OR MANIPULATION OF THE PROGRAM WHICH IS UNETHICAL, BY EITHER APPLICANTS OR VENDORS, AN AUDIT MUST BE COMPLETED. WHO PAYS FOR THE AUDIT IS A DIFFCULT DECISION. THE SUSPECTED ENTITY SHOULD BE RESPONSIBLE FOR AUDIT COSTS. IF IN THE EVENT THAT THE AUDIT IS INCONCLUSIVE, THE INNOCENT ENTITY SHALL BE REIMBURSED.**

Background

In its December 2000 report, the General Accounting Office proposed strengthening application and invoice review procedures in order to reduce the amount of funds inadvertently spent on ineligible services. The SLD has implemented a number of procedural changes suggested by the report, and has

undertaken numerous measures on its own initiative. Working closely with the FCC's Office of the Inspector General (OIG), the SLD has significantly stepped up its efforts aimed at detecting and resolving instances of waste, fraud, and abuse. For example, it has increased the number of audits, withheld suspect payments, withdrawn posted FCC Forms 470 from its website and rejected FCC Form 471 applications, and has increasingly coordinated its efforts with federal, state, and local law enforcement to combat fraud and other potentially criminal activity. The FCC, in turn, has examined their rules to consider whether their existing enforcement tools should be strengthened in any way.

The FCC seeks comment on whether their rules should explicitly authorize the SLD to require independent audits of recipients and service providers, at recipients' and service providers' expense, where the SLD has reason to believe that potentially serious problems exist, or is directed by the FCC. They specifically seek comment on the impact of such a rule on small entities.

18) What additional measures should the SLD/FCC take in order to combat waste, fraud and abuse in addition to the current measures they are undertaking? **ALL REASONABLE MEASURES MUST BE TAKEN, AS LONG AS THEY DO NOT PENALIZE LEGITIMATE APPLICANTS.**

Such current measures include: increasing the number of audits, withholding suspect payments, withdrawing posted Forms 470 from the website rejecting Form 471 applications, and coordinating their efforts with federal, state, and local law enforcement to combat fraud and other potentially criminal activity.

19) Should the SLD/FCC be permitted to ban from the program certain applicants, service providers, and others that engage in willful or repeated failure to comply with program rules? **DEFINITELY, PARTICIPATION IN E-RATE IS A PRIVELEDGE, NOT A REQUIREMENT. ONE MAJOR OFFENSE MAT BE UNINTENTIONAL AND SHOULD NOT BE OVERLOOKED. HOWEVER, IF THE ENTITY REPEATS THE SAME OFFENSE OR HAS THREE TOTAL OFFENSES, THAT ENTITY SHOULD BE BANNED FROM APPLYING FOR FUNDS INDEFINATELY. ANY HEARING WILL BE A WASTE OF FUNDS AVAILABLE FOR DISTRIBUTION TO SCHOOLS AND LIBRARIES.**

The Act and FCC permit them to initiate forfeiture proceedings against those that willfully or repeatedly fail to comply with statutory and regulatory requirement. There are no provisions in their current rules, however, to bar entities from participating in the program for periods of time.

The FCC seeks comment on whether they can and should adopt rules barring applicants, service providers, and others (such as consultants) that engage in willful or repeated failure to comply with program rules from involvement with the program, for a period of years. Assuming they were to adopt such a rule, they seek input on what standards should apply for barring such entities, and on what an appropriate length of time would be for such a prohibition. They also seek comment on other questions regarding implementation of such a prohibition, including whether the prohibition might apply to individuals, so that those responsible for actions that led to the barring of a particular entity do not evade the purpose of the prohibition by joining or forming another eligible entity.

Unused Funds

20) What are the reasons for funding to go committed, yet unspent each year and what changes could be made to reduce this amount? **SINCE PAYOUTS ARE NOT AUTHORIZED UNTIL INVOICES ARE SUBMITTED, THAT SUPPOSEDLY IS PROOF THAT THE FUNDS WILL BE DISPURSED CORRECTLY AND ARE LEGITIMATE FIGURES. THE SLD SHOULD ONLY EMPHASIZE FILING FORM 500'S ABD THE RETURN OF UNUSED FUNDS. NO DIFFICULTIES SHOULD BE CREATED FOR APPLICANTS IN PROVING NEED/RECEIVING FUNDS. ALSO, UNUSED/RETURNED FUNDS SHOULD BE PROPERLY INVESTED AND MANAGED IN ORDER TO ACHIEVE GROWTH/RETURN, THEREBY ADDING DOLLARS TO THE AVAILABLE FUNDS. HOW ARE THEY INVESTED NOW (IF SO?)**

Background

In each funding year, a portion of the $2.25 billion available under the program cap has gone unused, largely because some applicants do not fully use the funds committed to them in a given year. Under the SLD's procedures in effect in the first three funding years of the program, they engaged in various ongoing analyses throughout each funding year to ensure that it did not commit more than the $2.25 billion cap each year. Although this $2.25 billion limit on commitments ensured that the level of funds actually disbursed remained under the $2.25 billion cap, the result, given that applicants do not seek disbursement of all committed funds, has been that some of the $2.25 billion has gone unused by applicants each year.

The SLD issues funding commitment decision letters to applicants once their applications have been approved, but does not authorize payouts of committed funds until it receives valid invoices demonstrating that the applicants have obtained the requested products and services. The SLD approves the disbursement of funds once it receives a certification from the recipient and invoices from the service provider or applicant, indicating that approved services have begun. In many cases, however, applicants and vendors do not require all the funding or have cancelled the service without

informing the SLD that they won't need the funds.

As of June 30, 2001, approximately $940 million of the $3.7 billion in program funds committed to applicants during the first and second funding years was not disbursed. In the first funding year, the SLD disbursed approximately 82% of committed funds. In the second funding year through June 30, 2001, the SLD disbursed approximately 71% of committed funds. The SLD projects that a similar proportion of committed funds will be disbursed in Funding Year 3.

The FCC seeks comment on whether there are modifications to the application and funding disbursement process that would reduce the amount that goes uncommitted each year.

21) What should be done with unused funds at the end of each funding year? **SINCE THE PROGRAM IS ANNUALLY GROWING IN NUMBER OF APPLICANTS AND FUNDS APPLIED FOR, ANY UNUSED FUNDING SHOULD BE CARRIED OVER TO THE NEXT FUNDING YEAR TO PROVIDE ASSISTANCE TO A GREATER NUMBER OF SCHOOLS AND LIBRARIES. THE MAJORITY OF TELECOM CUSTOMERS PROBABLY DO NOT EVEN NOTICE THE SMALL FCC CHARGE, SO A CREDIT WILL NOT BENEFIR THEM AS MUCH AS APPROVING ADDITIONAL APPLICANTS FOR FUNDING.**

Background
FCC rules provide for an annual $2.25 billion cap on the E-rate program, and further provides that "all funding authority for a given funding year that is unused in that funding year shall be carried forward into subsequent funding years for use in accordance with demand." Although the rules address funding authority, it is silent as to the treatment of unused funds. Based on this language, the FCC decided to not roll-over funds from Year 1 to subsequent funding years, but rather chose to reduce the contributions from common carriers.

Thus, the FCC seeks comment on two options relating to the treatment of unused funds.
1) Should the FCC modify the rule to require expressly that unused funds from the schools and libraries mechanism (beginning with Funding Year 2) be credited back to contributors through reductions in the contribution factor (the thought being that consumers may benefit from reducing the contribution factor with unused funds because it will decrease the contribution amounts that carriers recover from consumers)? OR

2) Should the FCC require expressly that unused funds be distributed to schools and libraries in subsequent years of the E-rate program, in excess of the annual $2.25 billion cap (the thought being that unused funds in

subsequent funding years would provide additional resources for applicants, thereby assisting efforts to provide affordable telecommunications and information services to schools and libraries)? **YES**

22) What are some outmoded administrative or procedural E-rate rules or policies that could be eliminated?

- **POSSIBLY RE-THINK THE POLICY DISALLOWING MULTIPLE FORMS TO BE MAILED TOGETHER. WHEN MAILING CERTIFICATIONS OR ATTACHMENTS, THUS CREATES A SIZABLE EXPENSE FOR APPLICANTS WITH NUMEROUS ENTITIES, SUCH AS SCHOOL DISTRICTS AND LIBRARY SYSTEMS.**

- **ELIMINATE CIPA REQUIREMENTS WHICH ARE A VIOLATION OF THE LIBRARIES' AND PATRONS' CONTITUTIONAL RIGHTS.**

The FCC seeks comment on any administrative or procedural rules or policies of the FCC or SLD that should be revised or eliminated because they have become outmoded. In the four years since the implementation of the support mechanism, some such rules or policies may have become obsolete through changed circumstances or technologies, or may have been rendered unnecessary or redundant in light of changes made to the program. The FCC therefore seeks comment on such rules or policies in order to determine whether any are no longer necessary or in the public interest.

Respectfully submitted,

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